IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5385 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

BHARAT GOKALDAS VAGHRI : Petitioner.

Versus

COMMISSIONER OF POLICE & Ors.: Respondents.

Appearance:

MR ANIL S DAVE for Petitioner

Mr. S.P. Dave, AGP for respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/12/97

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India,the petitioner calls in question the legality and validity of the detention order, passed by the Police Commissioner of Ahmedabad city on 3rd July 1997, invoking the powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as `the Act').

2. In order to appreciate the rival contentions, few facts may be stated. Against the petitioner, about 6

complaints for the offences under Section 379 or 392 read with 114 I.P.C. came to be lodged either with Vatva police station or Sanand or Naroda police station. As alleged in those complaints the petitioner was snatching away the gold chains from the neck of the persons passing by the road and was thereby committing the theft, or at times putting the people to imminent danger of death or injury,he used to extort money or get what he wanted. The Commissioner of Police at Ahmedabad, when came to know about such activities of the petitioner, deeply inquired and found that the petitioner was the head-strong person and by his nefarious activities he was creating panic in the society challenging the maintenance of public order. The petitioner used to extort money by giving threats or resorting to coercive measures, and those who did not yield to his desire they were assaulted & beaten brutally and were then made to succumb to his desire or whims. The people worrying their safety were not coming forth to lodge complaint and have the action in accordance with law. Hearing about the petitioner or seeing him the people used to chevy, as they were feeling insecured. The Police Commissioner then found that to curb the anti-social activities of the petitioner there was no way out but to detain him, because under general law sounding dull it was difficult to control his activities taking appropriate action. He therefore passed the order in question on 3rd July, 1997. Consequent upon the same the petitioner came to be arrested.

3. The petitioner has challenged the legality and validity of the order on different grounds. According to him, there is no justification to describe him the head-strong person or dangerous person. Necessary bail papers were not given to him for making effective representation though the co-accused were released on bail. After he was released on bail by the court, the detention order was passed, and it was only with a view to see that he was put behind bars any how. The order passed is therefore malafide. Further, assailing the order it is submitted that the particulars about the witnesses giving the statement against him ought to have been furnished to him so as to make effective representation. There was no justification to suppress the same, because for the same the requirements of Section 9(2) of the Act were not satisfied. He has thus assailed on the ground of non-supply of better particulars also.

4. Even if it is believed on the basis of the above complaints lodged against the petitioner that he is the

habitual offender or a head-strong person and would fall within the definition of a dangerous person the order of detention cannot be maintained on one ground going to the root of the case, and it is about the exercise of discretion vested in the authority vide Section 9(2) of the Act. Before I deal with the ground going to the root of the case it would be better to state about the law thereof.

5. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention has been made are required to be communicated to the detenu, and further an opportunity of making the representation against the order of detention is required to be given. The detenu is therefore required to be informed not merely factual inference and factual material which led to inference namely not to disclose the certain facts,but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sourses would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act the detaining authority is empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has be exercised sparingly and in those cases where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons, the authority making the order has to make necessary inquiry personally applying his mind. What can be deduced from such constitutional as well as legal scheme is that the obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority

passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. No doubt it is open to the authority to entrust the task of inquiry to some one fit for the purpose but in that case also he has then to study the case papers and applying mind he has to take his independent decision. If he mechanically endorses or accepts the recommendation of the person entrusted with inquiry in that behalf, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power the other side may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this court in the case of Chandrakant N. Patel v. State of Gujarat & Others - 35 (1) [1994(1)] G.L.R. 761, may be made.

6. In view of such law, when the order in question is perused, it clearly appears that the discretion exercised for withholding the particulars of the witnesses is not consistent with the law. The authority has to personally inquire and feel satisfied for the exercise of the discretion vested. Here in this case the order passed by the Police Commissioner makes it clear that he entrusted the work to his subordinate and thereafter on the basis of the report made by his subordinate he simply formed the opinion which cannot be said to be consistent with law because for being satisfied so as to form the opinion about the non-disclosure he did not apply mind to the facts & circumstances before him and did not try to know that the report of the subordinate was perfect and suffering from no infirmity. When the privilege has not been exercised consistent with the provisions of law, non-disclosure has prejudicially affected petitioner's right of making effective representation. When such right is marred, the order of detention cannot be maintained. The same is required to be quashed.

7. With the result, the petition is allowed and the order detaining the petitioner is held unconstitutional & illegal. It is therefore quashed. The petitioner be released forthwith if no longer required in any other case. Rule accordingly made absolute.

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